

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

WRIT PETITION NO. 2416 OF 2004

Suersh S. Daware

... Petitioner

Vs.

The Brihanmumbai Municipal Corporation
and Ors.

... Respondents

Mr. A.S. Desai for Petitioner.

Mr. C.U. Singh with Mrs. A.R. Joshi for
Respondents.

Mr. P.B. Kakade for Intervenor in support of
Chamber Summons No. 253/04.

CORAM : F.I. REBELLO,J.
DATED : OCTOBER 27, 2004

P.C.

1. Rule. By consent heard forthwith.

2. The Petitioner herein impugns the order dated 2.5.2004 and 10.1.2003. By the order dated 10.1.2003, the Respondent No. 4 was pleased to impose punishment as set out in the order, consequent to the Disciplinary Authority holding that misconduct in respect of which the Petitioner was chargesheeted is proved. The Petitioner preferred an appeal against the said order which was dismissed by the Appellate Authority by order dated 20.5.2004.

3. The charge against the Petitioner herein was that the petitioner had contested the elections to the Legislative Council from Mumbai Teachers

constituency. The finding recorded was that in the B.M.C. Regulations, rules and conditions which were applicable to the Petitioner no employee of the B.M.C. was entitled to contest elections. It was also contended that teachers employed with Respondent No. 1 were to be governed by S.S. Code. The finding was recorded that SS Code is not applicable and servants are covered by the B.M.C. service rules.

4. At the hearing of this petition, on behalf of the Petitioner, their learned counsel has reiterated both the contentions. It is not necessary to decide as to applicability of S.S. Code as the petitioner can otherwise be decided on the basis that it is the Service (Conduct) Rules which are applicable to employees of the Respondent No. 1 including teachers.

. On behalf of the Respondent their learned counsel points out that under the rules as earlier stood, there was no express bar prohibiting the employee from contesting elections to the Legislative Council or Assembly or Parliament. The rule as then stood is rule 33 which reads as under :

"No officer or servant shall canvass or otherwise interfere or use his influence in connection with or take part in any

Municipal election but this will not
apply to his exercising his right of
vote at such elections without giving
indications of the manner in which he
proposes to vote or has voted."

. It is therefore, submitted that if the rule is
considered it will be clear that this was no bar on
the Municipal employee contesting any elections
including to the Legislative Council.

5. Having heard learned counsel, my attention is
invited to the Municipal Corporation of Brihan
Mumbai Services Rules, 1999. Sub Rule (3) of Rule
(6) reads as under :

"No Corporation employee shall canvass
or otherwise interfere with, or use his
influence in connection with, or contest
and/or take part in an election to
Parliament, any State legislature or
local authority (hereinafter referred to
as "The Election".

7. These rules were however, notified and came to
in effect from 21.8.2000. The Petitioner contested
elections to the Legislative Council which were
concluded in June, 2000. In other words, the rules
as amended have come into force only after the
Petitioner had already contested the elections and

results of the elections had been declared.

. It is in that context that the contention of the Respondent has now be analysed. In my opinion the law in the matter of what constitutes misconduct is no longer res integra. In Glaxo Laboratories (I) Ltd. Vs. Presiding Officer, Labour Court, Meerut & Ors. (1984) 1 S.C.C. 1 the Apex Court has made it clear.

. In the instant case, the rules as they stood, there was only a bar at the highest on Municipal employees from contesting elections to the Municipal Council. There was no specific bar otherwise. It is only by the rules of 1999 that for the first time a bar was imposed on contesting elections of the State Legislature. The rules which came into force on 21.1.1000 and will therefore, not be applicable to the present case. Under the old rules, misconduct as alleged would not be misconduct and in the light of that punishment imposed on the municipal employee who is petitioner herein will have to be set aside.

. Considering the above, the following order :

. Rule made absolute in terms of Prayer

Clause (a). No order as to costs.

(F.I. REBELLO,J.)